

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PATRICK DONOHUE, as Parent and Natural Guardian of
S.J.D.; PATRICK DONOHUE, Individually,

Plaintiffs,

-against-

NEW YORK CITY DEPARTMENT OF EDUCATION;
NEW YORK STATE EDUCATION DEPARTMENT,

Defendants.
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**NOTICE OF MOTION TO
DISMISS**

No. 18 CV 9364 (DAB)

TAKE NOTICE that, upon the accompanying Defendant New York City's Memorandum of Law in Support of Its Motion to Dismiss, dated November 20, 2018, and upon all other papers and proceedings had herein, Defendant New York City Department of Education ("Defendant" or "DOE"), by its attorney, Zachary W. Carter, Corporation Counsel of the City of New York, will move this Court before the Honorable Deborah A. Batts of the United States District Court for the Southern District of New York at the United States Courthouse located at 500 Pearl Street, in New York, New York, on a date and time to be determined by the Court, for an order pursuant to Rule 12 of the Federal Rules of Civil Procedure dismissing the claims against DOE in their entirety, and granting such other and further relief as the Court deems just and proper.

Defendants' Motion should be granted on the grounds that (1) the Court lacks subject matter jurisdiction over Plaintiffs' would-be § 1983 claims and over their IDEA claims; (2) Plaintiffs fail to establish the existence of a case or controversy; and (3) Plaintiffs fail to state a claim upon which relief may be granted.

TAKE FURTHER NOTICE that, pursuant to Local Civil Rule 6.1(b), Plaintiffs' opposing affidavits and answering memoranda, if any, shall be served upon Defendant within fourteen days, and Defendant's reply affidavits and memoranda of law, if any, shall be served within seven days after service of Plaintiffs' answering papers.

Dated: November 20, 2018
New York, New York

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By: /s/ David S. Thayer
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To: ***Via ECF***
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Via ECF
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cc: ***Via First-Class Mail***¹
Karl Ashanti, Esq.
Ralph Gerstein, Esq.
Brain Injury Rights Group, Ltd.
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¹ Mr. Indig purported to file notices of appearances on behalf of Mr. Ashanti and Mr. Gerstein in this action. (ECF Nos. 27-28.) This is improper. S.D.N.Y. Elec. Case Filing Rules & Instructions § 20.1. Although they do not appear to be formally counsel of record, Defendants have nonetheless served Mr. Ashanti and Mr. Gerstein with courtesy copies of DOE's foregoing Notice of Motion.